In the High Court of Judicature at Madras

Dated : 28.8.2007

Coram :-

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) Nos.1172 and 1173 of 2007
M.P.No. 2 of 2007

The Commissioner of Income Tax
Salem. .. Appellant in both appeals

Vs

M.Pachamuthu .. Respondent in T.C.No.1172 of 2007

M.Balavenkatesan .. Respondent in T.C.No.1173 of 2007

TAX CASE (APPEALS) under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras 'D' Bench dated 28.7.2006 made in I.T.A.Nos.123 and 124/Mds/2002 for the assessment year 2000-2001 against the order of the Commisioner of Income Tax (Appeals) Salem in ITA.Nos.206/03-04 dt.4.11.2000 and ITA.No.208/03-04 dt.2/11/2004, against the proceedings of gthe Assistant Commissioner of Income Tax, Company Circle, Salem in IDPP0009/ACIT/Co.Cir/SLM Dt 26.9.2003 and IDPB0002/ACIT/Co.Cir/SLM dt.26.9.2003.

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For Appellant : Mr.T.Ravikumar
Standing Counsel (Income Tax)

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JUDGMENT

JUDGMENT OF THE COURT WAS DELIVERED BY K.RAVIRAJA PANDIAN,J

The appeals are filed against the order of the Income Tax Appellate Tribunal Madras 'D' Bench made in I.T.A.Nos.123 and 124/Mds/2004 dated 28.7.2006. The relevant assessment year is 2000-2001.

2. The aseessees were the Directors of M/s.Hotel AMS Pvt. Ltd., Kondalapatti, Salem. During the course of survey conducted on 16.11.1999 under Section 133A of the Income Tax Act, it was noticed that the company had constructed the hotel with the share capital funds said to have been floated by the Directors. On enquiry with the assessees, the assessees offered a sum of Rs.12,00,000/- as income, out of which Rs.2,00,000/- each in the name of the assessees and remaining in the name of other members in Hindu Undivided Family. The assessees also admitted that there was no source for share capital and their share in the construction amounting to Rs.2,00,000/- each can be taken as unexplained investment. The assessees filed return of income on 21.9.2001 admitting the income of Rs.2,80,000/- each. However, when notice under Section 148 was issued on 16.10.2001, return was filed admitting additional income of Rs.2,00,000/- each as their unexplained income. In the Section 143(3) proceedings made on 26.3.2003, the unexplained investment of Rs.2,00,000/- was treated as additional income and penalty proceedings were initiated for concealment of income and furnishing of inaccurate particulars. Thus orders were passed on 26.9.2003 one against M.Pachamuthu and other against Balavenkatesan, the brother of the former imposing penalty of Rs.37,400/- each under Section 271(1)(c) of the Act. The assessees being aggrieved by the same preferred appeals before the Commissioner of Income Tax (Appeals), who allowed the same and the department preferred appeals before the Income Tax Appellate Tribunal have also been dismissed not on merits but with reference to the tax effect involved in the case. The correctness of the same is now canvassed before this Court.

3. Learned counsel appearing for the Revenue contended that the Tribunal has not considered the issue involved in these cases on merit, however, non-suited the Revenue on the ground that the tax effect involved in the appeals before the Tribunal was only Rs.37,400/- which is not more than Rs.1/- lakh as provided in the circular issued by the CBDT in F.No.279/126/98-I TJ dated 27th March 2000. Hence the appeals were not maintainable.

4. Heard the learned counsel for the revenue and perused the materials on record.

5. It is not argued by the counsel for the revenue that the circular issued is not binding on the revenue. However, he relied on the decision reported in 286 ITR 1 C(P&H) (COMMISSIONER OF INCOME TAX VS.

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ABHISHEKINDUSTRIES LTD.,). The issue involved in these appeals has been considered by us in the order made in T.C.(A) No. 222 of 2004 (COMMISSIONER OF INCOME TAX VS. ASSOCIATED ELECTRICAL AGENCIES) dated 16.8.2007 and held against the Revenue in the sense that if the tax effect is less than as provided in the CBDT circular in F.No.279/126/98-1 TJ and if the case has not come within the exceptions made in the circular, the appeals filed by the revenue in the light of the circular cannot be legally maintainable. The relevant portion of the order reads as follows:-

> "10. We are of the considered view that none of the exceptions stated in the circular are applicable to the facts of the present case. The circular was stated to be issued by invoking the statutory power under Section 119 of the Income-tax Act. The appeal is filed under Section 260-A of the Income-tax Act. It is well settled principle of law that each and every provision of a statute has to be given the same importance. One provision cannot be alleviated to a higher pedestal than the other provision, of course, unless or otherwise specifically stated either in the scheme, the Act or in the provision itself that a particular provision is subjected to or qualified by any other provision or the provision can be given effect to notwithstanding anything contained in any other provisions by assigning overriding effect. Hence, the contention that notwithstanding the circular, which was issued under Section 119 of the Income-tax Act, the appeal could be filed by the revenue under Section 260-A has to be rejected for the reason that if the contention is accepted, one of the Section would become virtually otiose and that cannot be the intention of the law makers. Hence, the above judgments cannot be taken in aid for non-suiting the respondent/assessee from taking shelter under the Government Order. "

6. On merit also the Commissioner of Income Tax (Appeals) after considering the statement submitted before him has found that the statement showed the business of the assessee, capital contribution shown in the returns of income before the survey, amount of authorised capital, paid up capital, loan from SUCB, Kondalampatty Branch, amount received from shareholders, estimated expenditure for furniture and fittings, status of maintenance of books of accounts, date of purchase of land, rate thereof etc., It was not on record that concealment was discovered as a result of enquiry or investigation of material found during the course of survey conducted by the Department nor it was a case of compatibility of the disclosure made with items of expenditure, sales, purchases, investments or any other thing disclosed by the assessees on discovery of any evidence. Mere addition agreed to by the assessees during the course of survey would not empower the assessing officer to

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levy the penalty. On the face of the above factual finding recorded by the Commissioner of Income Tax (Appeals) and having regard to the tax effect involved in these cases for the reasons stated above, the appeals are liable to be dismissed. Accordingly, the tax case appeals are dismissed. Consequently, the M.P.No.2 is closed.

krr/

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Assistant Registrar,
Income Tax Appellate Tribunal,
Rajaji Bhavan, Besant Nagar,
Chennai

2. The Commissioner of Income-tax
(Appeals) No.3, Gandhi Road, Salem-636 007.

3. The Assistant Commissioner of Income Tax
Company Circle, Salem.

4.The Commissioner of Income Tax, Salem.

+1 cc to Mr.N.Murali Kumaran, Advocate Sr.No.53709.

VRK(CO)
dcp/5.10

TAX CASE Appeal Nos.1172
and 1173 of 2004

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